



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1995

Ms. Robin Abbott
Staff Attorney
Office of the State Auditor
P.O. Box 12067
Austin, Texas 78701

OR95-1149

Dear Ms. Abbott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act chapter 552 of the Government Code. Your request was assigned ID# 36044.

The Office of the State Auditor (the "auditor") has received a request for documents relating to a particular application for employment. You assert that the information is excepted from required public disclosure under section 552.103 of the Government Code.

Section 552.103 excepts from required public disclosure information relating to litigation "to which the state or a political subdivision . . . is or may be a party." Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 518 (1989) at 5, 328 (1982). Thus, to secure the protection of this exception, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). This office has concluded that a reasonable likelihood of litigation exists when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, *see* Open Records Decision No. 452 (1986) at 2, and when a requestor hires an attorney who then asserts an intent to sue, *see* Open Records Decision No. 555 (1990). On the other hand, the mere fact that a person, on more than one occasion, publicly states an intent to sue does not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 5.

You claim that litigation is anticipated because the requestor's client has asked several times why his application was rejected and has hired an attorney "to determine whether some type of error or improper action was taken with respect to his application." In addition, you claim that the auditor may anticipate litigation based on the fact that the applicant's attorney has requested the above information under the Open Records Act. You do not claim, however, that the auditor has been directly threatened with litigation. Moreover, this office has concluded litigation is not reasonably anticipated where an applicant who is rejected for employment hires an attorney and that attorney seeks information about the reasons for the rejection as part of his investigation. Open Records Decision No. 361 (1983) at 2.

We conclude that the auditor has not demonstrated that litigation regarding this matter to which the auditor may be a party is reasonably anticipated. Accordingly, you may not withhold the requested information under section 552.103 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 36044

Enclosures: Submitted documents

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(w/o enclosures)